FILED
APR 22 1971
E. ROBERT SEAVER, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 237

JEWEL G. BEREND, *Petitioner*

v.

J. F. PRITCHARD & CO., *Respondent*

MOTION FOR LEAVE TO FILE A PETITION FOR REHEARING OUT OF TIME AND PETITION FOR REHEARING

JEWEL G. BEREND
P. O. Box 12423
6920 Sandalwood Lane
Fort Worth, Texas 76116

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 237

JEWEL G. BEREND, *Petitioner*

v.

J. F. PRITCHARD & CO., *Respondent*

MOTION FOR LEAVE TO FILE A PETITION FOR REHEARING OUT OF TIME

Your undersigned petitioner, J. G. Berend, respectfully moves this honorable Court for leave to file his Petition for Rehearing out of time in the form annexed hereto, upon the following grounds:

1. This is an employee action for compensation for work related injuries and an accounting under a profit sharing agreement on sales of certain equipment designed by me for respondent. In all courts I have had to represent myself, the District Court having refused my requested appointment of court counsel.

2. An adverse decision of the District Court that my claims were barred by limitations under the law of

Texas, was affirmed without hearing by the Fifth Circuit Court of Appeals.

3. My petition for a writ of certiorari to this Court was denied on October 12, 1970. I then made inquiry of a Washington law firm as to what further procedure was available to review this determination of your Court. On February 4 they informed me that under Rule 58 the time to file a petition for rehearing had expired on November 8, 1970. On February 7, I sent to the Clerk the papers in the case with a request that a rehearing be granted. These were returned to me on the ground that they were not in form to be considered as a petition.

4. Since I was unable to file the petition for rehearing in proper time solely due to my lack of knowledge of the Rules, I respectfully petition that my fault in this respect be excused and that leave be granted for the filing of the annexed petition with the Clerk.

Respectfully submitted,

/s/ JEWEL G. BEREND
Jewel G. Berend, Petitioner
P. O. Box 12423
6920 Sandalwood Lane
Fort Worth, Texas 76116

STATE OF TEXAS
COUNTY OF TARRANT

Subscribed and Sworn To Before Me This 23 Day of March, 1971.

/s/ DICK CHILDERS
Notary Public.

Expires June 1, 1971

March 23, 1971

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 237

JEWEL G. BEREND, *Petitioner*

v.

J. F. PRITCHARD & CO., *Respondent*

PETITION FOR REHEARING

The petition for a writ of certiorari herein to the United States Court of Appeals for the Fifth Circuit was denied on October 12, 1970. The petition sought the review of a *per curiam* affirmance of a decision of the United States District Court for the Northern District of Texas holding your petitioner's compensation claims time-barred under Article 5526 of the Texas

statutes, based on an interpretation of a fixed rather than continuing date of the underlying agreements.

Petitioner throughout has represented himself and has as a result failed to make clear in his filings before the lower courts the continuing nature of the negotiation covering his claim for work-related injury and breach of a profit sharing agreement with his former employer, with the result that an improper application of the limitation statute has been made without a determination on the underlying merits.

The Questions Presented in the petition were accordingly directed to the scope of the due process requirement of the Fifth Amendment to the Constitution in ensuring practical access of a civil complainant to the procedures of the Federal Courts in terms of requiring either the assignment of counsel in an appropriate case or the granting of equivalent assistance in framing a proper pleading to bring before the court of first instance the justiciable issues applicable to petitioner's situation.

On November 24, 1970 after the denial of the petition herein, this Court heard the closely related issue of improper limitation of access to courts by the imposition of filing costs on civil claimants in divorce proceedings (Boddie v. Connecticut, No. 27) and possessory actions (Sanks v. Georgia, No. 28) and your petitioner promptly requested legal advice as to the possibility of a rehearing.

Admittedly, the present petition goes a step further into the question, looking not merely to monetary but to procedural barriers to the effective expression of a civil claim by a layman.

Yet in equitable consideration there is no distinction between the two. The right to counsel in criminal matters is a recognition not merely of the constitutional right to be heard, but a judicial recognition that in the absence of counsel or professional direction, that right is circumscribed to unacceptable limits.

Petitioner does not contend that actual court-paid attorneys must be appointed in civil matters as constitutional requirement, but this is not to say that a total absence of legal guidance is thereby authorized. Our laws have always provided for self-representation by parties before the courts as an inherent part of our judicial process, but, as these procedures become more complex, the plaintiff who seeks redress on his own finds himself barred from effective participation and ultimately, as petitioner here, reaches the end of the available procedures without having ever come to meaningful grips with the legal essentials on which he must rely. In short, if due process requires that a citizen be permitted to represent himself, then it must of necessity require that that personal representation be made legally meaningful. As this Court has just said in deciding *Boddie*, —— U.S. —— (39 LW 4294) March 2, 1971

> "persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard.
>
> "an opportunity . . . granted at a meaningful time and in a meaningful manner . . . for a hearing appropriate to the nature of the case"
>
> "within the limits of practicability"

A rehearing herein is hereby moved and on such rehearing petitioner prays that an order be entered granting his petition and remanding the same to the

Northern District of Texas for retrial after amendment of the complaint.

Respectfully submitted,

/s/ JEWEL G. BEREND
Jewel G. Berend, Petitioner
P. O. Box 12423
6920 Sandalwood Lane
Fort Worth, Texas 76116

STATE OF TEXAS
COUNTY OF TARRANT

Subscribed and Sworn To Before Me This 23 Day of March, 1971.

/s/ DICK CHILDERS
Notary Public.

Expires June 1, 1971

March 23, 1971

Certificate Under Rule 58

Petitioner hereby certifies that the within motion and accompanying petition for rehearing are presented in good faith and not for delay and are, as shown therein, restricted to the grounds specified, in Rule 58(2).

/s/ JEWEL G. BEREND
Petitioner

STATE OF TEXAS
COUNTY OF TARRANT

Subscribed and Sworn To Before Me This 23 Day of March, 1971.

/s/ DICK CHILDERS
Notary Public.

Expires June 1, 1971

Affidavit of Service

Petitioner herein, appearing pro se, hereby certifies that a copy of the annexed motion and petition for rehearing has been served by him upon respondent by depositing the same in the United States mail box, first-class, airmail, postage prepaid addressed to Messrs. Dietrich, Tyler, Davis, Burrell & Dious, Esquires, 1001 Dwight Building, Kansas City, Missouri 64105, counsel for respondent.

/s/ JEWEL G. BEREND
Petitioner

STATE OF TEXAS
COUNTY OF TARRANT

Sworn to before me this 23rd day of March, 1971.

/s/ DICK CHILDERS
Notary Public

Expires June 1, 1971

AIR MAIL—SPECIAL DELIVERY—REGISTERED

JEWEL G. BEREND
P. O. BOX 12423
FORT WORTH, TEXAS 76116

March 26, 1971

Clerk of the
Supreme Court of the United States
Washington, D. C. 20543

Dear Sir:

RE: Berend v. J. F. Pritchard & Co.
No. 237, October Term, 1970.

I, Jewel G. Berend, Request the Supreme Court of the United States, to at least advise, J. F. Pritchard & Company of Missouri & California, 4625 Roanoke Parkway, Kansas City, Missouri 64112

My 25-Years Employer, Whom I Developed Their Equipment Under Unusual Hazardous Conditions, To Avoid, United States Defense Plants, Shut Downs. Monies Due Me on This Work, $96,822.25, Since 1954, When I Was Confined and Disabled in the Continental Hotel, Kansas City, Missouri, and Could Not Protect My Interests.

To: At least Negotiate a Settlement With Me, as the Above Disabled Me for Life, My Wife and I Have to Exist. I Have Written, J. F. Pritchard & Co. Over a Hundred Letters and Made Three Special Trips to Their Office, They Refused To Talk to Me. I Am an American Citizen, I Request the Supreme Court of My Country, United

States, To Advise, J. F. Pritchard & Company to at least Negotiate With Me for Justice.

Very Truly Yours

/s/ JEWEL G. BEREND
JEWEL G. BEREND

Signed This the 26th Day of March, 1971, Before Notary Public in and for Tarrant County, Texas.

/s/ ABRAM GRIFFITH

CC: J. F. Pritchard & Company
4625 Roanoke Parkway
Kansas City, Missouri 64112

CC: Dietrich-Tyler-Davis-Burrell-Discus
1001 Dwight Bldg.
Kansas City, Missouri 64105

J. F. PRITCHARD & CO.
OF CALIFORNIA
A DIVISION OF J. F. PRITCHARD & CO.
4625 ROANOKE PARKWAY, KANSAS CITY 12, MO.

January 27, 1942

Selective Service Board,
Denton County
Denton, Texas

Gentlemen:

We respectfully submit the following information in regard to the employment of Mr. Jewel G. Berend of Longview, Texas:

We are manufacturers of cooling towers which are erected for water cooling purposes throughout the southwestern area of the country.

At the present time, we have a large volume of work on hand in this line, and every one of our jobs is in connection with a vital defense project of some nature which is evidenced by the fact that a priority rating of A-10 is the lowest rating that we have obtained on any of our jobs in the past six months.

Mr. Berend is the chief of our cooling tower erection crews and has been solely and directly responsible for the erection of these towers for the plants which we serve.

We trust that this information may be of value to you in arriving at his proper classification.

Respectfully yours,

J. F. PRITCHARD & Co.

By: /s/ J. F. PRITCHARD

JFP:j

bcc: JGBerend

[UNITED STATES WAR DEFENSE PLANTS. *J. F. Pritchard & Co. Sold Defective equipment to World War-2, Vital Defense Plants, I had to repair and replace same under hazardous conditions to avoid Vital War Defense Plant Shut Downs. So J. F. Pritchard & Co. Could Receive His Payment in Full for This Defective Equipment, J. F. Pritchard & Co. Requested This Deferment for Their Financial Gain, J. G. Berend Was Physically and Mentally Disabled.* When Confined & Disabled in Continental Hotel, Kansas City, Missouri.]